

63. At some point during his review of the PIF, Mr. Ramirez found in his office mailbox a document prepared by Ms. Hecht. The document appeared to be a list of some kind. Ms. Hecht's list had no organization, did not look like professional, reliable work, was littered with typos and was not easily reviewable. (SFUSD Exh. T1 12-13.) Mr. Ramirez glanced at the document but quickly determined that it would not be helpful to his review of the file. (Tr. 376-77) ("[W]hen I remember getting this, I had already started looking at the file myself. This isn't something that I expected from her and really at the time I probably spent a couple seconds looking at this. I knew that I had already started looking at the file myself.") He disregarded the list and continued his own review of the file. (Tr. 377) ("I spent maybe two or three seconds just flipping through it and set it aside and didn't look at it closely again.")

64. Later in 1997, Ms. Hecht provided an Affidavit in Support of GGPR's Petition to Deny License Renewal. (EB Exh. 5 at 15.) In that Affidavit, Ms. Hecht stated that she "itemized the contents of the files" and provided that list to Mr. Ramirez in June 1997. (EB Exh. 5 at 15.)

65. There is no dispute that Mr. Ramirez received a document from Ms. Hecht. (SFUSD Exh. T1 at 12-13.) Nor is there any dispute in the record that Ms. Hecht never actually performed the simple task to which she was assigned – namely, straightening up the PIF for Ramirez's review. (Tr. 530) (Q: To your knowledge, did Ms. Hecht ever organize or clean up the public inspection file? A: No. I never had the sense that the file had actually ever been straightened up for me. Q: So, just so the record is clear, did Ms. Hecht's memo inform in any way your review of the file? A: No.) (Tr. 1217.)

66. Although Ms. Hecht and her Affidavit played a significant part of the Enforcement Bureau's cross-examination of Mr. Ramirez, Ms. Hecht was not called by the Bureau to appear. Rather, the only testimony regarding Ms. Hecht's actions, credibility and the preparation of her October 18, 1997 Affidavit and attached "list" was proffered by Enforcement Bureau witness Mr. Lopez. Mr. Lopez's testimony regarding Ms. Hecht, however, was inconsistent and generally discredited on cross-examination. (Tr. 1202-18.)

67. Mr. Lopez initially testified that he did not "recall who, if anyone, helped draft Ms. Hecht's [October 18, 1997] declaration." (EB Exh. 4 at 5.) Yet, during cross-examination, Mr. Lopez suddenly remembered that Ms. Hecht had actually provided him an "outline or framework for a document that would be her affidavit." (Tr. 1205.) In fact, Mr. Lopez ultimately conceded that not only had he typed Ms. Hecht's affidavit (of which he had previously no recollection at all) but also that he may have edited it as well. (Tr. 1205-6.)

68. Mr. Lopez further testified that he was competent to offer evidence as to the work that Ms. Hecht did for Mr. Ramirez and what her "list" was supposed to mean. On cross-examination, however, Mr. Lopez conceded that he hardly knew Ms. Hecht, that he was not present when Mr. Ramirez gave Ms. Hecht the assignment to organize the file (Tr. 1213-14); that she never told him what Mr. Ramirez asked her to do (Tr. 1215); that he never saw Ms. Hecht actually organizing or reviewing the file (Tr. 1217); that he did not know whether Ms. Hecht relied upon any FCC regulations or manuals in purporting to identify document missing from the PIF (Tr. 1215-16); nor that she had any background in FCC regulations or public radio broadcast law. (Tr. 1216.)

69. Moreover, Mr. Lopez testified that he never saw Ms. Hecht give her list to Mr. Ramirez or Mr. Ramirez reviewing it; never saw Mr. Ramirez speak to Ms. Hecht about her work; nor whether the list itself had any indicia of reliability. (Tr. 1216-18.) In fact, Mr. Lopez testified that he did not know what Ms. Hecht's memo meant at all. (Tr. 1217-18; EB Exh. 4 at 5.)

70. Finally, Mr. Lopez was asked under cross-examination at hearing whether he had any personal knowledge as to Ms. Hecht's reputation as to character. (Tr. 1211.) He stated that he believed her to be "a trustworthy person." (Tr. 1211.) Mr. Lopez was then presented a copy of his deposition transcript from September 24, 2004, when he was asked precisely the same question. Just six months earlier, Mr. Lopez stated unequivocally that he did not know Ms. Hecht's reputation. (Tr. 1213.) Mr. Lopez conceded that he had met with Ms. Hecht only three or four times, with perhaps one 15-20 minute conversation in late 1997 – hardly sufficient time to form an opinion of her trustworthiness. (Tr. 1210-11.) Mr. Lopez admitted that his prior deposition testimony was accurate – that he essentially had no knowledge as to Ms. Hecht's reputation as to character. (Tr. 1213.)

IV. Mr. Ramirez's Review of the PIF and Preparation of the License Renewal Application

71. Having received no assistance from Ms. Hecht, Mr. Ramirez endeavored to organize and review the PIF on his own. (SFUSD Exh. T1 at 12-13.)

72. To assist in his examination of the PIF, Mr. Ramirez consulted the License Renewal Application instructions, FCC regulations referenced in the questions, and several authoritative guidelines and manuals. (Tr. 246; SFUSD Exh. T1 at 13.) Specifically,

Mr. Ramirez reviewed the regulation applicable to noncommercial stations, 47 C.F.R. Section 75.3527, as that regulation was directly referenced in Section III, Question 2 of FCC Form 303-S. Mr. Ramirez also reviewed a counsel memorandum prepared by the National Association of Broadcasters, the National Public Radio Station Manager's Handbook, and the Broadcasting and Cable Yearbook. (SFUSD Exh. T1 at 13; SFUSD Exh. 6 at 1.)

73. Mr. Ramirez also sought advice from KALW's then-communications counsel, Ernie Sanchez, of the Sanchez Law Firm. (EB Exh.6 at 17; SFUSD Exh. T1 at 13; Tr. at 533.)

74. Calling Attorney Sanchez reflected Mr. Ramirez's recognition of the seriousness presented by the License Renewal Application. (Tr. 521) ("I was making my own call on when I would call [Sanchez] in and – if I figured it was important enough, I wouldn't consult with anyone else before calling him. I would call him.") Mr. Ramirez was cognizant of the costs associated with consulting with Attorney Sanchez but was committed to the expense when necessary to assure himself that he was acting appropriately in responding to the questions on the License Renewal Application. (Tr. 247-48) ("I was aware that working with Ernie Sanchez, literally picking up the phone and calling him was an expense to the station. I was very sensitive to that cost, as so I was very sensitive to picking up the phone and calling him.")

V. The License Renewal Application Certification Relating to Issues/Programs Lists in the PIF

75. Prior to receipt of the License Renewal Application, Mr. Ramirez "generally understood the principal of the FCC's relationship to stations and the licensing that provided that stations operated in a manner that was in the public interest and served community needs

because the station was using public space, public airwaves, to transmit. On that condition, the FCC granted broadcast licenses.” (Tr. 386-87.)

76. Under cross-examination, Mr. Ramirez testified that in completing Section III, Question (2) of Form 303-S: “I understood that this particular section of the Public Inspection File rules was with respect to the stations operating in that manner. How are we covering the issues that are important to the community? Well, okay, this must be the list that we have to place in the file. So, I think that that was mostly how I determined that look. We have to put into the public file the piece of paper that actually shows that we’re covering issues that are important to the community. That’s really what I was looking for when I was going through the file.” (Tr. 387.)

77. After reviewing the PIF, Mr. Ramirez believed that the issues/programs lists was one aspect of the file that needed improvement: “[M]y recollection is that I don’t remember seeing anything that at least met my test of look we have to place into the Public Inspection File a report that shows that we are programming that covers issues that are important to our community. I don’t remember seeing something that I liked.” (Tr. 388.)

78. Accordingly, prior to completing the License Renewal Application, Mr. Ramirez asked various program producers to put together lists of issues and programs that demonstrated the Station’s treatment of community issues. (Tr. 393) (Q: So you asked at least John [Covell] and perhaps one or more producers to prepare something? A: Yes.)

79. One of those program producers was John Covell. Mr. Covell co-produced a program at KALW entitled “City Visions” which provides important coverage of local news issues including political elections, municipal issues and the city’s economy. (Tr. 302-03.)

Mr. Ramirez believed that this was an excellent source for representative programming that was responsive to community issues. Accordingly, in June or July of 1997, Mr. Ramirez asked Mr. Covell to prepare written materials for inclusion in the PIF prior to the submission of the License Renewal Application. (Tr. 305.)

80. At Mr. Ramirez's request, Mr. Covell prepared a seven-page document providing a list of "City Visions" programs for the period 1992-1997. This issues/programs list was placed in the PIF. (SFUSD Exh. T1 at 14.)

81. Mr. Ramirez testified that he also asked other producers to produce similar issues/programs lists for the PIF that covered the relevant license period. (Tr. 393.) At the time the License Renewal Application was submitted, however, Mr. Ramirez believed that the City Visions list alone was sufficient to satisfy the issues/programs list requirements. (SFUSD Exh. T1 at 14.)

82. It is not in dispute that that a large number of shows were aired during Mr. Ramirez's tenure at KALW that were of responsive to the needs, interests and concerns of the local community. For example, "AIDS Update" was a weekly show involving a significant local public health issue. (Tr. 293.) Arts and culture are an important part of the community in San Francisco and the program "Open Air" met that interest by featuring fine arts interviews with local authors. (Tr. 296.)

83. Mr. Ramirez testified repeatedly that while he does not specifically recall asking the producers of programs such as "AIDS Update" and "Open Air" to provide quarterly issues/programs lists, he remembers generally asking the Station's producers to provide these lists as part of completing the License Renewal Application. (Tr. 297, 393.) He distinctly

remembers asking Mr. Covell, which, as Mr. Ramirez testified “isn’t to say that I didn’t ask [others], I just don’t remember in the same way that I remember working with John Covell.”

(Tr. 311.)

84. As discussed below, Mr. Ramirez later came to learn that the “City Visions” list was defective in several respects, including the it did not specify the community issues addressed by each program, that it did not date to the start of the license term in 1991, and that having been prepared just prior to the completion of the License Renewal Application, that it was not placed into the PIF in a timely manner. (SFUSD Exh. T1 at 14.)

85. Descriptions of the responsive programming broadcast by the Station were available to the public through KALW’s quarterly Program Guides, which were available at the Station, local schools and public buildings, District offices and other locations throughout the community. (SFUSD Exh. T6 at 1; SFUSD Exh. T2 at 13; Tr. 681.)

86. Mr. Ramirez has always been candid with the Commission about the fact that the “City Visions” list is what he relied upon to determine that the issues/programs lists in the PIF were sufficient when he prepared the License Renewal Application certification. While there may also have been additional program lists in the PIF at that time, in his January 1998 Declaration to the Commission, Mr. Ramirez specifically identified the City Visions list as his basis for answering “Yes” to Question 2 of Section III. (EB Exh. 6 at 17-18; SFUSD Exh. T1 at 14.) (“At the time I made that response . . . I also believed that I had fully accounted for all public issues/programs during my tenure as General Manager in the document which Petitioner has labeled Exhibit O [City Visions list], which is what I believed was called for by the question and the rule.”)

VI. License Renewal Application Certification Regarding Ownership Reports

87. License Renewal Application Section III.1(b), asks whether the applicant's Ownership Reports as required by 73.3615 have been filed with the Commission. Mr. Ramirez believed that Question 1(b) referred only to the ownership report accompanying the renewal application. (SFUSD Exh. T1 at 15.)

88. Mr. Ramirez understood that the purpose of the Ownership Reports, in the case of KALW, was to identify the composition of the Board of Education for SFUSD – the licensee. Staggered elections are held every two years for the four-year terms on the SFUSD Board. (SFUSD Exh T1 at 15; Tr. 442-44.)

89. Mr. Ramirez believed that the PIF requirement was satisfied by inclusion of the 1997 Ownership Report, which reflected the current composition of the School Board at the time of renewal. (EB Exh. 6 at 17; SFUSD Exh. T1 at 15.)

90. Mr. Ramirez was unaware that there also needed to be interim Ownership Reports prepared in 1993 and 1995. (Tr. 442-43.) These reports would have disclosed the elections of new District Board members. (EB Exh. 34 at 3; EB Exh. 37 at 22-24, 29-31.) While he had a general idea that the Board composition could change with each election cycle, he believed that the Commission rules only required the placement in the PIF of the 1997 Ownership Report. Mr. Ramirez admitted this misunderstanding in his January 1998 Declaration to the Commission. (EB Exh. 6 at 17.) (“I believed at the time I responded “Yes” to Questions III 1(a) and (b), these only referred to KALW’s having filed with the Commission, respectively, a current Annual Employment Report and a current Annual Ownership Report.”)

91. The Presiding Judge takes judicial notice that changes in Board membership, as the result of public elections to a public school board, are a matter of public record. Moreover, KALW's quarterly Program Guides, which were available at the Station and throughout the community, listed the current Board of Education members and the Superintendent. (EB Exh. 44 at 23, 70, 153, 248.)

VII. The Sanchez Law Firm's Review of the Renewal Application

92. The Sanchez Law Firm was actively involved in the preparation of the License Renewal Application. (Tr. 536-37) (Q: [.] Would you characterize Mr. Sanchez as being actively involved in the license renewal application process up to the submission of the application on [August 1, 1997]? A: Yes, he was actively involved.)

93. According to Enforcement Bureau Exhibit No. 7, which is a slip listing of work entries and billing records for The Sanchez Law Firm covering the period of May 1997 to January 1998, Mr. Ramirez spoke to Attorney Sanchez regarding the License Renewal Application on at least four separate occasions prior to the submission of the Application for the Superintendent's signature. (EB Exh. 7 at 1-2, entries 2309, 1943, 2310 & 1956; Tr. 533) (Q: Was [.] your principal purpose for having conversations with Mr. Sanchez at that time, would have been completing the license renewal application? A: Yes.) Attorney Sanchez's billing records also reflect time spent during this period collecting license renewal materials for Mr. Ramirez. (EB Exh. 7 at 1, entry 1819.)

94. Specifically, Attorney Sanchez billed the Station for conferences with Mr. Ramirez on May 8, June 30, July 7 and July 10, 1997. (EB Exh. 7 at 1-2.) The telephone calls on July 7 and 10, 1997 alone exceeded 75 minutes. (EB Exh. 7 at 2.)

95. In addition, Sanchez submitted bills to the Station for work performed on May 7, May 14, May 31, July 2 and July 30, 1997. (EB Exh. 7 at 1-2.)

96. Mr. Ramirez's preparation of the License Renewal Application and the answers certified therein were informed by the instruction of Attorney Sanchez. (Tr. 533) (Q: Had those previous conversations with Mr. Sanchez informed your analysis in completing the license renewal application? A: Certainly it informed my completion of the renewal application.)

97. Mr. Ramirez was not an FCC regulatory specialist and required Attorney Sanchez's review and advice before presenting the application to the Superintendent's office for signature. Accordingly, when Mr. Ramirez completed the License Renewal Application he forwarded the draft document to Attorney Sanchez for review. Enforcement Bureau Exhibit No. 7 reflects that on July 30, 1997, just one day before the License Renewal Application was submitted, Attorney Sanchez reviewed the final application. (EB Exh. 7 at 2.)

98. Mr. Ramirez would not have submitted the License Renewal Application for certification by the Superintendent's office had Attorney Sanchez not confirmed that it was appropriate to do so. (Tr. 534) ("I wouldn't have ultimately sent the renewal application into the FCC if I had not heard back from him considering that the work he was doing was to review the renewal application on July 30.; Q: So just to be clear, you wouldn't have sent in the application if Mr. Sanchez had not confirmed with you it was okay to have sent in? A: Correct.)

99. Subsequent to Attorney Sanchez's review, the License Renewal Application was forwarded to the Superintendent of the District, was signed on his behalf on July 30, 1997, and was received by the Commission on August 1, 1997. (SFUSD Exh. 5 at 5.)

REVIEW OF THE LICENSE RENEWAL APPLICATION IN OCTOBER 1997

I. GGPR Alleges Errors Made in the License Renewal Application

100. On October 1, 1997, Attorney Sanchez spoke with and then received a letter from the law firm of Berchenko & Korn on behalf of GGPR (the "Berchenko Letter"). (SFUSD Exh. 4 at 79-80.) The Berchenko Letter informed Attorney Sanchez that GGPR planned to file a petition to deny the License Renewal Application unless SFUSD opened negotiations with GGPR regarding the transfer of control of the Station to GGPR. (SFUSD Exh. 4 at 79.)

101. The Berchenko Letter referenced a list of twenty-eight allegations that would form the basis of GGPR's Petition to Deny. Attorney Sanchez provided a copy of the Berchenko Letter and the attached list to Mr. Ramirez the following day, October 2, 1997. (EB Exh. 7 at 2, entry 2115; SFUSD Exh. T1 at 16.)

102. Attorney Sanchez directed Mr. Ramirez to review the list of GGPR allegations and to prepare a written response as to whether the allegations had merit. Specifically, Attorney Sanchez directed for each of the twenty-eight allegations, that Mr. Ramirez answer three questions: "Is [the allegation] right? Is [the information] required? Does [the information] matter?" (SFUSD Exh. 6 at 1; SFUSD Exh. T1 at 17.)

103. Two of the allegations challenged the completeness of the PIF; specifically, whether the proper ownership reports and issues/programs lists were in the PIF as of August 1, 1997. (SFUSD Exh. 6 at 3.)

II. Mr. Ramirez's October 4, 1997 Memorandum Admitted that There Was a Mistake in the License Renewal Application Certification With Respect to the PIF

104. In response to the Berchenko Letter and under instructions from Attorney Sanchez, Mr. Ramirez re-examined the portions of the License Renewal Application addressing the PIF requirements and again consulted with authoritative articles and guidelines addressing the maintenance of ownership reports and issues/programs lists. (SFUSD Exh. 6 at 1; SFUSD Exh.T1 at 17.)

105. The vast majority of certifications in the License Renewal Application were not challenged. Thus, in responding to the Berchenko Letter, Mr. Ramirez focused his re-review on specific and limited issues. Mr. Ramirez presented the results of his follow-up in a memorandum to Attorney Sanchez dated October 4, 1997 (the "October 1997 Memo"). (SFUSD Exh. 6.)

106. Item No. 2 of the Berchenko Letter attachment states:

"(1)(b) – Have the applicant's ownership reports as required by 73.3615 been filed with the Commission?"
—stated YES.
Supplemental Ownership Reports (323-E), since January 1991, are not in the station's public file and may not have been filed with the commission. The membership of the Board of Education has changed frequently since that time.

107. Item No. 3 of the Berchenko Letter attachment states:

"(2) – Has the applicant placed in the public inspection file at the appropriate time the document required by Section 75.3527?—stated YES.
Quarterly issues programs list not in file after 9/91. A simple list of topics, from 6/5/95 to 7/7/97, was placed in the file in late July for the purposes of license renewal.

108. With respect to the three-part test prescribed by Attorney Sanchez, Mr. Ramirez stated in the October 1997 Memo to Sanchez: “Yes. Yes. Yes.” to both of the allegations in Items 2 and 3 of the Berchenko letter. In other words, Mr. Ramirez told Attorney Sanchez that “Yes,” the GGPR allegations were right, “Yes,” the missing information was required for the License Renewal Application, and “Yes,” the information mattered to the FCC. (SFUSD Exh. T1 at 17; SFUSD Exh. 6 at 1.)

109. Mr. Ramirez also stated in his response to each of these three items: “Will correct with explanation,” that is, that the License Renewal Application should be corrected with an explanation. (SFUSD Exh. 6 at 1; SFUSD Exh. T1 at 17.)

110. By October 4, 1997, it was clear to Mr. Ramirez that the certification on the License Renewal Application filed on August 1, 1997, was incorrect with respect to Section III, Question 2, the PIF question. On that same date, Mr. Ramirez transmitted his findings to the Sanchez Law Firm. (Tr. 538-39; SFUSD Exh. 6 at 1.)

111. According to the Sanchez Law Firm slip listings, Attorney Sanchez reviewed the October 1997 Memo and the GGPR allegations on October 6, 1997. (EB Exh. 7 at 3, entry 2124.) Attorney Sanchez billed SFUSD for one hour, or \$280.00 for that review. (EB Exh. 7 at 3.)

112. Mr. Ramirez’s October 1997 Memo advised Attorney Sanchez that the License Renewal Application PIF certification was not accurate. (SFUSD Exh. 6 at 1-2; see also Tr. 539) (“I think what I was telling Ernie is Ernie, it looks like I may have made a mistake, because I misunderstood the question in the application, and so this is my assessment today. And that’s what I was telling him in this memo.”)

113. In addition to Attorney Sanchez's receipt of the October 1997 Memo, Mr. Ramirez and Attorney Sanchez spoke at least four times in the first ten days of October 1997 regarding Mr. Ramirez's discovery and steps SFUSD needed to take in response to GGPR's allegations. (EB Exh. 7 at 2-3.)

114. On October 17, 1997, Attorney Sanchez reviewed a fax from Mr. Ramirez with an inventory of the PIF. (EB Exh. 7 at 3, entry 2151.)

115. Mr. Ramirez was the only representative of KALW or SFUSD to interface with Attorney Sanchez regarding the accuracy of the GGPR allegations as made in the Berchenko Letter. (EB Exh. 7 at 2-3.) Attorney Sanchez discussed receipt of the Berchenko Letter with Enrique Palacios, SFUSD's liaison to KALW and directed KALW's Operations Manager William Helgeson to gather specific documents; however, there is no evidence that Attorney Sanchez disclosed the conclusions of the October 1997 Memo or the inventory of the PIF to either. (EB Exh. 7 at 2, 3, entries 2115 and 2136.)

III. The Role of The Sanchez Law Firm In Responding to GGPR's Allegations

116. Receipt of the Berchenko Letter and GGPR's allegations triggered an increasingly prominent role for the Sanchez Law Firm in SFUSD's response to GGPR and the Commission. (SFUSD Exh. T1 at 18-19.)

117. Station management expected that Attorney Sanchez would provide counsel and direct them as to how best address the FCC issues raised in the Berchenko Letter. (SFUSD Exh. T1 at 18) ("At that point, I suspected that the Station was headed towards a complex legal battle. Moreover, I recognized that this was an extremely important matter for SFUSD and we needed

professional legal counsel and leadership. At that point, and from then until I left the Station at the end of January 1998, I viewed the GGPR complaints as a legal matter[.]”)

118. Mr. Ramirez expected that Attorney Sanchez would use the information provided to him to take appropriate action, specifically, to make sure that “correct[ions] with explanation” were made to the FCC in the appropriate manner. (SFUSD Exh. T1 at 19.)

119. For example, after Mr. Ramirez notified Attorney Sanchez that GGPR’s allegation that the 1993 and 1995 Ownership Reports were not in the Station’s PIF was correct, upon the advice of Attorney Sanchez, Mr. Ramirez completed new ownership forms to be signed by the appropriate authority at SFUSD. (Tr. 544) (“[A]s a result of my conversations with Ernie we created the ownership reports that were supposed to have been filed in 1993 and 1995.”) The Ownership Reports for the periods covering Board changes in 1993 and 1995 were signed and dated on December 10, 1997, and Mr. Helgeson placed copies in the PIF. (SFUSD Exh. 7; *see also*, Tr. 544-45) (A: They are dated December – I don’t remember the exact date – 1997. Because we weren’t trying to cover up anything. Q: So anyone looking at them in January of ’98 or even today would see they were prepared after August 1, 1997, is that right? A: Yes, yes.)

120. Mr. Ramirez brought many skills to the GM position – including a keen recognition as to his own limitations. (SFUSD Exh. T1 at 4.) Upon receipt of the Berchenko Letter and his subsequent acknowledgement in the October 1997 Memo that mistakes had been made in completing the License Renewal Application, Mr. Ramirez’s role evolved from being directly in charge of the license renewal process, to taking direction from Attorney Sanchez. (Tr. 539-40) (“This was way above my degree of education and knowledge at this point and I was

glad to have Ernie involved at this point. Significantly – I saw my role as changing from being the guy who's in charge and telling others what to do to following the instructions of my lawyer. I mean obviously when you know or when you think that you may have done something wrong or you may have made a mistake, especially on the order of this, you tell your lawyer and you do what your lawyer tells you to do.”)

GGPR PETITION TO DENY AND RESPONSE

I. The Petition to Deny and the Role of Mssrs. Evans and Lopez

121. On November 3, 1997, GGPR filed with the FCC the Petition to Deny. (EB Exh. 5.)

122. The Petition to Deny made several allegations against KALW's then-GM, Mr. Ramirez, and SFUSD's management. (EB Exh. 5.) The allegations included claims of employment discrimination and violation of the Commission's EEO rules, failure to observe civil service and labor union requirements in the hiring process, and failure to maintain the Station's PIF in accordance with FCC rules. (EB Exh. 5.)

123. The Petition to Deny attached several exhibits. (EB Exh. 5.) Many of those exhibits were documents or items that were obtained unlawfully by members of GGPR or their sympathizers at the Station, including files extracted from confidential personnel files, private e-mail accounts, and other storage areas at the Station. (SFUSD Exh. 4 at 16-20, 74-75.)

124. Most of the improperly accessed materials were provided to GGPR by Mr. Evans, then the Station's Engineer and a member of GGPR. (Tr. 1229-31.)

125. Mr. Evans died in January 1998. Under cross-examination, Mr. Lopez conceded that he knew Mr. Evans had improperly removed confidential documents (Tr. 1229-31) – yet relied on those same documents and Mr. Evan’s “trustworthiness” as foundational evidence for GGPR’s positions vis-à-vis the Station and the Petition to Deny. (Tr. 1221-24.)

126. Mr. Lopez conceded that someone who steals documents – like Mr. Evans – cannot be trusted. (Tr. 1231.)

127. Mr. Lopez testified that he played no role in the preparation of the License Renewal Application and did not look at the PIF until *after* the Mr. Ramirez completed his review. (EB Exh. 4 at 2-3.) Rather, his allegations of Mr. Ramirez’s state of mind in July 1997 were based entirely on hearsay-laden statements of others. (EB Exh. 4 at 5-6.)

128. Because GGPR members had taken private documents, Station management assumed that GGPR members or sympathizers also could have removed items also from the Station’s PIF. (Tr. 767-68) (“At the time after the challenge was filed by Golden Gate Public Radio, we knew that part of their challenge had been made up of documents, both from private files and that documents had been gone – my private files had obviously been looked at ... [T]here were also charges about documents not being in the Public File that should have been in there. We assumed – I assumed, I should say – that since my documents, my files, my private files had been gone through, that the Public File has been gone through also by either Golden Gate Public Radio principals or friends of Golden Gate Public Radio. So at that point, when it was – if there was a question about a missing document in late ’97 that should have been in the file, I operated from the assumption at that time up through the time of the response to GGPR’s petition that we filed in early ’98. I operated from the position that it had been taken from the

Public File, just like documents obviously had been lifted from my personal, excuse me, from my private file.”)

II. SFUSD’s Opposition to the Petition to Deny

129. In the sixty-three (63) intervening days between receipt of the Petition to Deny on November 18, 1997, and the filing of SFUSD’s Opposition to the Petition to Deny on January 20, 1998 (the Opposition”), the Sanchez Law Firm billed SFUSD for work performed with respect to SFUSD’s opposition on more than forty (40) separate occasions. (EB Exh. 7.)

130. SFUSD’s Opposition was prepared by Attorney Sanchez and his colleague, Attorney Jenkins. (SFUSD Exh. T2 at 8; Tr. 545.) Attorney Sanchez additionally counseled Messrs. Ramirez and Helgeson regarding the documents that they needed to place in the PIF in response to GGPR’s allegations, and Mr. Ramirez and Mr. Helgeson followed his instructions. (Tr. 544-45.)

131. This reliance on the Sanchez Law Firm was clearly explained by Mr. Ramirez under cross-examination at hearing: “I needed to rely on our attorneys to direct us to what to do next with respect to the license renewal application, what to do next with respect to responding to the letter from the GGPR attorneys. Then, subsequently, once the GGPR petition was formally submitted that heightened the legal situation and significantly increased the reliance that we had to place on our attorneys[.]” (Tr. 449.)

132. The Sanchez Law Firm also prepared declarations for Messrs. Ramirez and Mr. Helgeson to be filed in support of SFUSD’s Opposition. The Sanchez Law Firm billing records reflect that the declarations of Messrs. Ramirez and Mr. Helgeson were prepared by Attorney Jenkins between January 13 and 17, 1998. (EB Exh. 7 at 7-9); (Tr. 545) (Q: Now, who

was it that actually drafted, typed up this declaration? A: I remember Susan Jenkins, an attorney in Ernie Sanchez's office, drafted this.)

III. Mr. Ramirez's January 17, 1998 Declaration Acknowledges that Mistakes Were Made in the License Renewal Application

133. With respect to the certification on the License Renewal Application that the PIF met the requirements of Section 73.3527, Mr. Ramirez's January 17, 1998 Declaration ("January 1998 Declaration"), filed with the Opposition, stated: "My understanding of what information was required to be provided and certified was not complete and I believe I may have misunderstood what was required in completing Section III, Questions 1, 2 and 3." (SFUSD Exh. 4 at 50.) 2/

134. Paragraphs 11 and 12 of Mr. Ramirez's January 1998 Declaration outline the basis for Mr. Ramirez's mistaken and incomplete understanding of what was required by the FCC rules associated with Questions 1 and 2 of Section III of the License Renewal Application. These paragraphs describe Mr. Ramirez's state of mind at the time that he was completing the Application, and the mistaken beliefs or incomplete understandings that he held at the time, which led to his responses in the Application. (SFUSD Exh. 4 at 50).

2/ While the January 1998 Declaration states that Mr. Ramirez's misunderstanding was with respect to "Section III, questions 1, 2, and 3" (SFUSD Exh. 4 at 50), clearly, the reference to Section III, Question 3 was an error. Section III, Question 3 of the License Renewal Application applies to "Commercial AM, FM and TV Applicants Only," and, insofar as KALW is a noncommercial radio station, was appropriately left blank by Mr. Ramirez. (SFUSD Exh. 5 at 4.) On the other hand, there were three questions -- Questions 1(a), 1(b) and 2 -- in Section III of the License Renewal Application that were applicable to KALW, and these three questions were completed by Mr. Ramirez. The reference in the January 1998 Declaration to Questions 1, 2 and 3 suggests that the Sanchez Law Firm, which drafted Mr. Ramirez's declaration, was relying on Mr. Ramirez's October 1997 Memo, which identifies the three relevant questions of Section III with the numbers 1, 2, and 3, as opposed to 1(a), 1(b) and 2. (See SFUSD Exh. 6 at 1.)

135. More directly, Mr. Ramirez stated in his January 1998 Declaration: "I believe at the time I responded "yes" to Question III.1.(a) and (b) [of Section III], those only referred to KALW's having filed with the Commission, respectively, a current Annual Employment Report and a current Annual Ownership Report. Since such Reports were to be attached to and filed with the license renewal application, I believed that "Yes" was the appropriate response." (SFUSD Exh. 4 at 50.)

136. Specifically with regard to Section III, Question 2, of the License Renewal Application, Mr. Ramirez's stated in his January 1998 Declaration that "I had conferred with communications counsel regarding what was required to be in the public files and with respect to response to this question. I relied upon my understanding of the advice of counsel, the counsel memorandum on this subject published by the National Association of Broadcasters and my knowledge of the files maintained by KALW in responding 'Yes' to this question." (SFUSD Exh. 4 at 50.)

137. Mr. Ramirez's January 1998 Declaration further explained that: "At the time I made the response, I believed that Ms. Hecht's assessment of the public inspection file was inaccurate and confused and I did not recall any prior conversation I may have had with Mr. Evans on this subject." (SFUSD Exh. 4 at 50.)

138. With respect to issues/programs lists, Mr. Ramirez's January 1998 Declaration candidly acknowledged: "I also believed that I had fully accounted for all public issues/programs during my tenure as General Manger in the document which Petitioner has labeled O [Mr. Covell's City Visions list], which is what I believed was called for by the question and the rule." (SFUSD Exh. 4 at 50.)

139. While Mr. Ramirez's January 1998 Declaration did not list examples of each mistake made in his responses to Section III of the License Renewal Applications, Paragraph 11 clearly acknowledges that Mr. Ramirez misunderstood the requirements of Questions 1, 2 and 3 of Section III of the Application. (SFUSD Exh. 4 at 50.)

140. At hearing, Mr. Ramirez testified to what he intended by paragraphs 11 and 12 of the January 1998 Declaration: "What I'm saying there is that I believe I may have misunderstood the question and provided a response that wasn't accurate. But to the best of my knowledge and in good faith that it was accurate." (Tr. 447.)

141. Mr. Ramirez later learned, and testified at hearing, that although he referred to GGPR's Exhibit O in his declaration as the document on which he relied for the certification as to issues/programs list, that exhibit contained only three pages of the seven-page document created by Mr. Covell and placed in the PIF – and thus was not what Mr. Ramirez understood to be the "City Visions" list. (Tr. 418) ("In my mind through the time I did the declaration in 1998 I had always thought that Exhibit O was the full seven-page document and not the sample that GGPR had attached to their petition.")

142. With respect to his state of mind when preparing the certifications for the License Renewal Application, Mr. Ramirez declared: "I believed I was responding honestly and accurately to this and all questions in Section III, and so reported to Mr. Palacios when I transmitted the completed form to him so that he could transmit it to the appropriate representative of the SFUSD, the licensee for signature." (SFUSD Exh. 4 at 50-51.)

143. In short, Mr. Ramirez's January 1998 Declaration conveys the discovery he made in his October 1997 Memo to Attorney Sanchez – that while he had completed the License

Renewal Application honestly and in good faith based on his understandings prior to filing the License Renewal Application,, he later realized that mistakes were made. (EB Exh. 6 at 17-18; SFUSD Exh. 6 at 1.)

144. There was no effort to conceal Mr. Ramirez's acknowledgement of making a mistake. The incorrect response was admitted in the January 1998 Declaration. (SFUSD Exh. 4 at 50.) Although the words of the January 1998 Declaration were not his own, Mr. Ramirez believed that his Declaration sufficiently notified the Commission that the actions he took were in good faith and that at no time had he attempted to conceal information or otherwise mislead the Commission. (SFUSD Exh. T1 at 13-14; Tr. 545-49.)

145. At hearing in this matter in June 2005, Mr. Ramirez continued to discuss the circumstances of his 1997 preparation of the License Renewal Application with candor. Under cross-examination, Mr. Ramirez readily acknowledged that although he had reviewed Section 73.3527 of the Commission's Rules and related guidelines regarding the placement of issues/programs lists in the PIF, he mistakenly believed that the efforts he made to correct the PIF in July 1997 were sufficient to answer "Yes" to Section III, Question 2. (Tr. 389-90.)

146. Specifically, Mr. Ramirez testified that his misinterpretation of Section 35.3537 is "kind of the root of the problem here that that was where I made the mistake, that to the degree that I thought I understood what the program list was for, to the degree that this was the first time I was working on a license renewal application that spanned so many pages and so many questions and each question that I had to respond to compelled the reading of a different regulation other than the Public Inspection File." (Tr. at 389-90.)

147. Unlike other sections of the renewal application, which related to issues which Mr. Ramirez was wholly unfamiliar and required significant assistance, Mr. Ramirez believed that he adequately understood the PIF requirements: "This is the one area that I thought I knew well, which isn't to say that I glossed over this area, because I knew that we had to have in our Public Inspection File lists that showed that we were operating in a manner that covered issues and met the community needs that this is where I made the mistake." (Tr. 390.)

148. At hearing, Mr. Ramirez readily accepted responsibility for misunderstanding that the License Renewal Application certification also related to the timely placement in the PIF of the issues/programs lists: "I was either working too fast, not paying attention, but I do remember reading through the regulation. The fact that the reports had to be there in the file on a quarterly basis by a certain date, I'm sorry I missed that detail. I think that's where I made the mistake and that's where I misunderstood what we had to have in the file by when and how I should've answered the question differently." (Tr. at 390.)

IV. Mr. Helgeson's January 1998 Declaration

149. Mr. Helgeson's January 16, 1998 declaration (the "Helgeson 1998 Declaration") (SFUSD Exh. 4 at 74-75) was similarly prepared by Attorney Jenkins. (Tr. 802-03.) The Helgeson 1998 Declaration states that Mr. Helgeson had reviewed the exhibits GGPR attached to the Petition to Deny. (SFUSD Exh. 4 at 74.) Mr. Helgeson explains in the Declaration that he determined that many of the documents relied upon by GGPR had been stolen from his personal files and other confidential files of the Station, including personal e-mail accounts. In the Helgeson 1998 Declaration, Mr. Helgeson unambiguously states that he did not authorize any

one involved with GGPR to have access to, obtain or copy any of the files in his personnel file, or other non-public documents maintained in his cubicle. (SFUSD Exh. 4 at 74-75.)

150. Mr. Helgeson believed that identifying the source of GGPR's exhibits – and exposing their illegal tactics – was the principal purpose of his Declaration. (Tr. 1161, 1163-64.) Statements regarding the source of GGPR documents constituted the majority of the Helgeson 1998 Declaration. (SFUSD Exh. 4 at 74-75.)

151. The Helgeson 1998 Declaration also contained two brief references to the PIF. Specifically, Mr. Helgeson stated that he had “responsibility for maintaining a four-drawer file cabinet.” (SFUSD Exh. 4 at 74.) He further explained that “[t]hird drawer of that file cabinet contains KALW's public file. The other three drawers contain non-public business-related documents that are the property of KALW and SFUSD. Only I and my supervisors have authorized access to these other three drawers.” (SFUSD Exh. 4 at 74.)

152. This portion of the Helgeson 1998 Declaration distinguishes the difference between the public and private files located in the file cabinet, and makes it clear that only authorized staff were permitted to access the three drawers with non-public information. These statements supported the Helgeson 1998 Declaration's purpose to reveal that GGPR had stolen documents from the non-public sections of the file cabinet. Later in his Declaration, Mr. Helgeson describes documents that were taken from the “above-described file cabinet in one of the non-public drawers.” (SFUSD Exh. 4.)

153. The statement regarding “maintaining” the file cabinet housing the PIF was given in the context of the main issue addressed in the Helgeson 1998 Declaration; Mr. Helgeson's verification that documents contained in the GGPR Petition has been improperly

removed from files and facilities for which he was responsible. (SFUSD Exh. 4 at 74.)

Mr. Helgeson therefore assumed that the statement related to his primary assertion that he had not given GGPR permission to take or copy documents from the file cabinet. (SFUSD Exh. 4 at 75.) Mr. Helgeson did not intend to imply that he was or had ever been responsible for keeping the PIF up-to-date. (Tr. 806, 825) (Judge Sippel: You didn't have a clue [about the FCC rules?])

A: I never – no, I did not have a clue. I only knew from what my supervisor told me, and I assisted him.)

154. Mr. Helgeson, in fact “maintained” the integrity of the PIF in the sense that he was responsible for the maintenance of the file cabinet that contained the PIF. (SFUSD Exh. T2 at 9.) The PIF was in Mr. Helgeson’s general workspace in the Station’s new location after 1997 and Mr. Helgeson was tasked with physically maintaining that area. If papers were askew, if drawers were jammed, or if someone wanted to access any of the files in the cabinet, including the PIF, this would fall under Mr. Helgeson’s responsibilities. (SFUSD Exh. T2 at 9.)

155. At times, Mr. Helgeson was also given documents by GMs at the Station and told to place the documents in the PIF. (Tr. 672) (“[I]f I had gone into the public inspection file, I would have done it on [Mr. Ramirez’s] request to look for something. If he’d asked me to look for something specific. If he’d ask me to remove something specific, I would have removed that[.]”) Mr. Helgeson on his own initiative, however, did not create any documents for the PIF nor on his own initiative place any documents into the PIF. (Tr. 672) (“I didn’t take any initiative regarding the Public File during [Mr. Ramirez’s] tenure there.”).

156. Attorney Sanchez and Attorney Jenkins knew that Mr. Helgeson had not been asked to update the contents of the PIF and had not done so on his own. (SFUSD Exh. T2 at 9.)